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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,049	03/28/2006	Cintra Jaggan-Vince	GJ-277J	7983
7590 Iandiorio & Teska 260 Bear Hill Road Waltham, MA 02451	08/20/2008		EXAMINER HAWTHORNE, OPHELIA ALTHEA	
			ART UNIT 3772	PAPER NUMBER
			MAIL DATE 08/20/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/574,049	JAGGAN-VINCE, CINTRA	
	Examiner	Art Unit	
	OPHELIA HAWTHORNE	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 May 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 - 13 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1 - 13 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 28 March 2006 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

This action is in response to amendments/arguments filed on 05/20/2008. Currently, claims 1 – 13 are pending in the instant application.

Response to Arguments

Applicant's arguments filed 05/20/2008 have been fully considered but they are not persuasive. With respect to claim 1 and subsequent dependent claims 2 – 4 and 9 – 11, Applicant argues that O'Brien discloses two fastener means (8a, 8b). In contrast, the Applicant's new claim specifies that the fastener means is a single fastener means for one-handed one-time operation by the user. The applicant's single fastener means for one-handed one-time operation by the user is clearly much more convenient for the user than the O'Brien two fastener means (8a, 8b). Also, O'Brien does not show that the fastener means (8a, 8b) is a releasable fastener means for enabling the sling portion to be fastened and unfastened with respect to the support portion. With respect to the Applicant's argument regarding the single fastening means as claimed in the instant application, the single fastening means is new matter, since no support for a single fastening means was described in the original disclosure. Furthermore, applicant did not explicitly described the single fastening means, is it hook and loop? Or is it a single structure as in one buckle as shown in the original disclosure?. In addition, O'Brien discloses that the fastening means (8a, 8b) are not essential to the invention

allowing for modification to the means for connecting the sling portion to the support portion. Furthermore, O'Brien discloses alternate means for attachment to include hook and loop which will then meet the claimed limitation as a single fastening means for enabling the sling portion to be fastened and unfastened for a one-time one-handed operation by the user.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “**fastener means comprising at least one press stud**” as described in claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

Art Unit: 3772

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

(2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."

(g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

(h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.

(i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

(j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

(k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).

(l) Sequence Listing, See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claim 1** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No amendment may introduce new matter into the disclosure of an application after its filing date. See MPEP 608.04.

Specifically, claim 1 recites the claim limitation "**a single fastener**"; however, the original filed disclosures does not provide evidence that Applicant possessed "a single fastener" at the time the application was filed.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claim 11** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, Claim 11 recites the limitation "**the fastener means**" in claim.

There is insufficient antecedent basis for this limitation in the claim.

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte*

Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, **claim 11** recites the broad recitation “**at least one press stud**” and the claim also recite “**a single fastener**” which is the narrower statement of the range/limitation.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

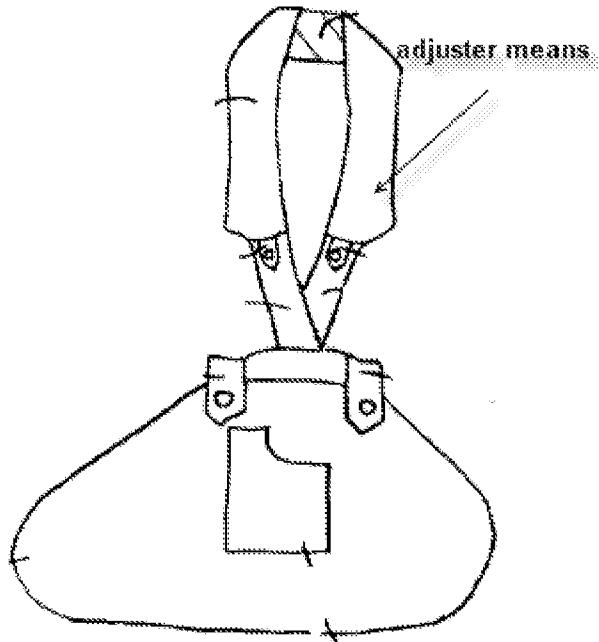
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 1 – 2, 4 –6, 9 – 13** are rejected under 35 U.S.C. 102(b) as being anticipated by **O'Brien (GB 2345855)**.

Regarding claim 1, O'Brien discloses a sling assembly (**Fig. 2**) for supporting an arm of a user, which sling assembly comprises a support portion (**4**) for being worn by the user, a sling portion (**2**) for supporting the arm of the user and fastener means for fastening the sling portion to the support portion, characterized in that the fastener means is a releasable fastener means for enabling the sling portion to be fastened and unfastened with respect to the support portion for exercise purposes with the sling portion still being worn, the sling portion does not extend around the elbow of the arm (**as shown in Fig. 1**) and thereby restrict elbow movement whereby elbow problems are prevented from developing when the sling assembly is worn for extended periods of

time, and the fastener means is a single fastener means for one-handed one-time operation by the user. Note: O'Brien discloses alternate means such as hook and loop for attaching the sling portion to the support portion and therefore, meet the claimed limitation as a single fastening means for enabling the sling portion to be fastened and unfastened for a one-time one-handed operation by the user.

Regarding claim 2, O'Brien discloses an adjuster means (**see image below**) for adjusting the sling portion with respect to the support portion and thereby to enable the arm of the user to be supported in an optimum comfortable position. Note: it should be noted that examiner considers the strap to be the adjuster means since the strap can be lengthen and/or shorten according to the user's comfort level.



Regarding claim 4, O'Brien discloses the fastener means (**Page 2, lines 5** and the adjuster means (**see image above**) are separately formed from each other. It should be noted that examiner is considering the fastener means to be hook and loop.

Regarding claim 5, O'Brien discloses the support portion **(4)** is a harness **(as shown in Fig. 2)**.

Regarding claim 6, O'Brien discloses sling assembly in which the harness has a ring portion for fitting over a head of the user and being worn around the neck of the user **(see illustration in Fig. 1)**.

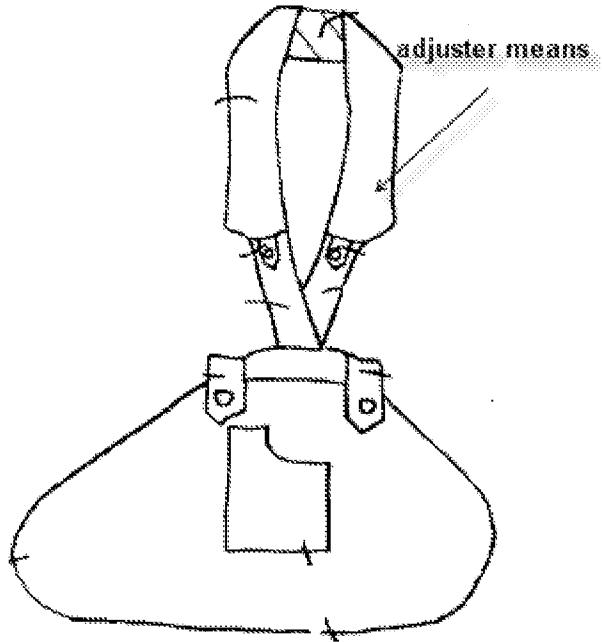
Regarding claim 9, O'Brien discloses the sling portion is a folded sheet member **(Fig. 3)**.

Regarding claim 10, O'Brien discloses fastener means comprising a plurality of interlocking plastics members **(Page 2), lines 1 – 5** which press together and pull apart.

Regarding claim 11, O'Brien discloses the fastener means comprises at least one press stud **(Page 2), lines 1 - 2**.

Regarding claim 12, O'Brien discloses the sling assembly does not engage an upper part of the arm **(as shown in Fig. 1)** such as to restrict movement of the shoulder of the user from which the arm extends thereby to allow shoulder movement and prevent shoulder problems developing when the sling assembly is worn for extended period of time.

Regarding claim 13, O'Brien discloses the adjuster means is an adjuster means which extends obliquely **(see image below)** with respect to the longitudinal axis of the user whereby the shoulder of the user from which the arm extends is given support in a direction towards the user's body.

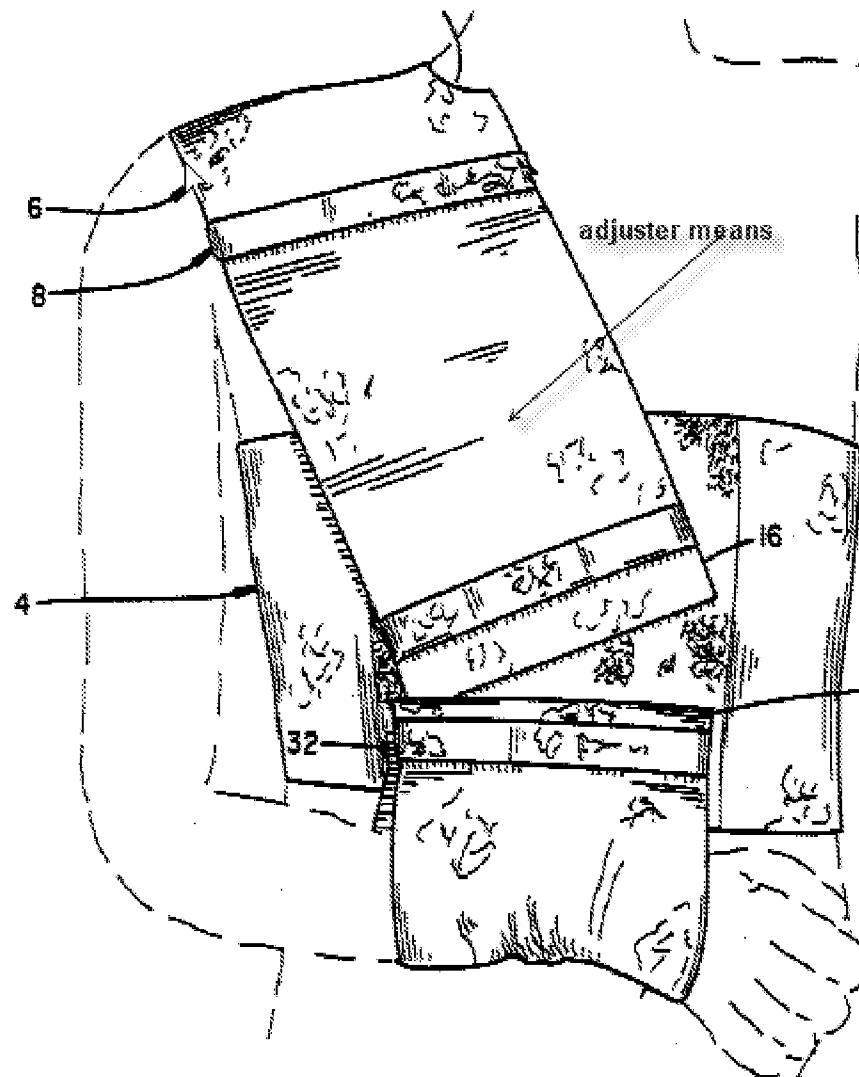


9. **Claims 1 – 2, 4 - 5, 9, 12 & 13** are rejected under 35 U.S.C. 102(b) as being anticipated by **Johnson (US 5,358,470)**.

Regarding claim 1, Johnson discloses a sling assembly (**Fig. 1**) for supporting an arm of a user, which sling assembly comprises a support portion (**10**) for being worn by the user, a sling portion (**8**) for supporting the arm of the user and fastener means (**32**) for fastening the sling portion to the support portion, characterized in that the fastener means is a releasable fastener (**[Col. 4], line 21**) means for enabling the sling portion to be fastened and unfastened with respect to the support portion for exercise purposes with the sling portion still being worn, the sling portion does not extend around the elbow (**as shown in Fig. 1**) of the arm and thereby restrict elbow movement whereby elbow problems are prevented from developing when the sling assembly is

worn for extended periods of time, and the fastener means is a single fastener (32) means for one-handed one-time operation by the user.

Regarding claim 2, Johnson discloses an adjuster means for adjusting the sling portion with respect to the support portion and thereby to enable the arm of the user to be supported in an optimum comfortable position. Note: it should be noted that examiner considers the strap to be the adjuster means since the strap can be lengthen and/or shorten according to the user's comfort level.



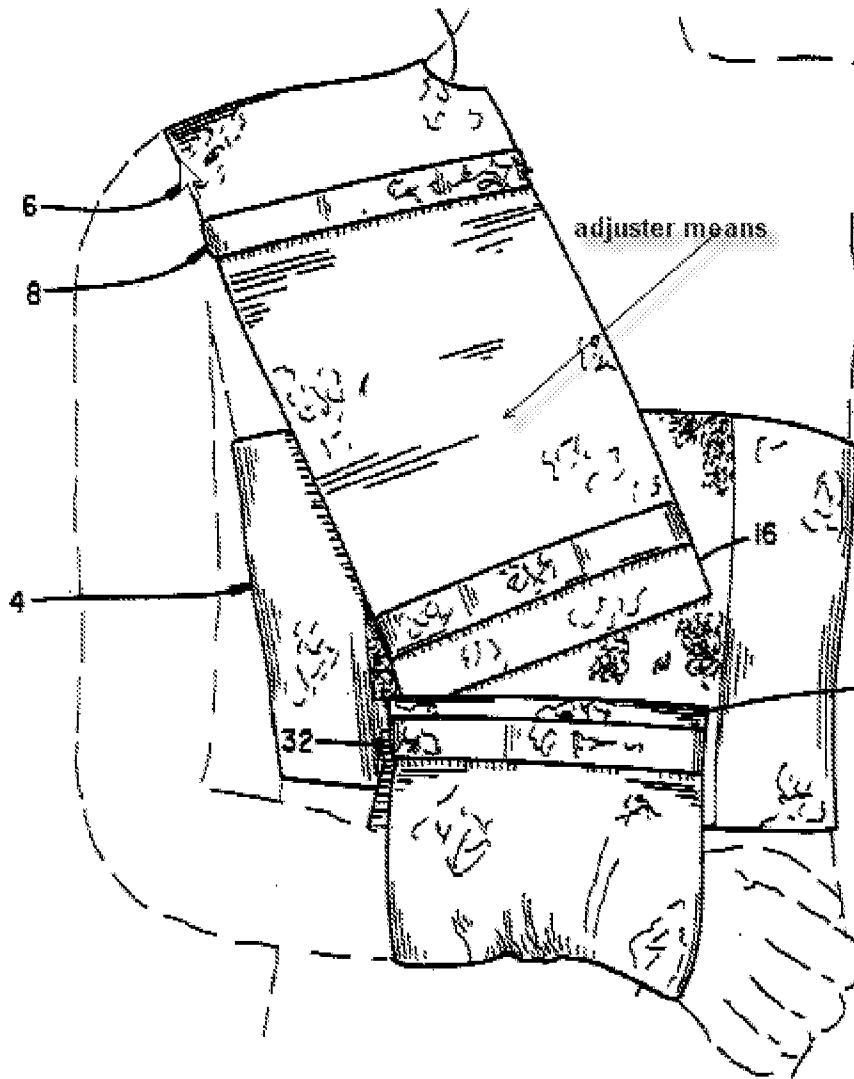
Regarding claim 4, Johnson discloses the fastener means (**32**) and the adjuster means (**see image above**) are separately formed from each other.

Regarding claim 5, Johnson discloses the support portion is a harness (**see Fig. 1**).

Regarding claim 9, Johnson discloses the sling portion (**10**) is a folded sheet member (**Fig. 4**).

Regarding claim 12, Johnson discloses the sling assembly (**Fig. 1**) does not engage an upper part of the arm (**as illustrated in Fig. 1**) such as to restrict movement of the shoulder of the user from which the arm extends thereby to allow shoulder movement and prevent shoulder problems developing when the sling assembly is worn for extended period of time.

Regarding claim 13, Johnson discloses the adjuster means is an adjuster means which extends obliquely (**see image below**) with respect to the longitudinal axis of the user whereby the shoulder of the user from which the arm extends is given support in a direction towards the user's body.



Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. **Claims 7 & 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **O'Brien (GB 2345855 A)** in view of **Berrehaul (GB 2181952 A)**.

Regarding claims 7 & 8, O'Brien's substantially describe the invention as claimed, see rejection to claim 1 above, except for a sling assembly in which the support portion is a jacket and the jacket has one sleeve only.

However, Berrehail teaches a sling assembly in which the support portion is a jacket and the jacket has one sleeve only (**as illustrated in Figs. 3a, 3b, 4**). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify a sling assembly of O'Brien in which the support portion is a jacket that has one sleeve only taught by Berrehail since doing so would allow the weight of the supported arm in the sling to be spread across the back of the user.

13. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over **O'Brien (GB 2345855 A)** in view of **Melendez et al. (US 4,759,353)**.

Regarding claim 3, O'Brien substantially described the invention as claimed, see rejection to claim 1 above, O'Brien did not explicitly disclosed the fastener means and the adjuster means are integrally formed with each other.

However, Melendez et al. teaches a universal forearm sling and humeral stabilizer comprising a fastener means **(24)** and an adjuster means **(19)**, **Fig. 5** integrally formed with each other. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the sling assembly of O'Brien to have the fastener means and the adjuster means integrally formed with each other since doing so would allow the user to easily adjust the sling portion.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OPHELIA HAWTHORNE whose telephone number is (571) 270-3860. The examiner can normally be reached on Monday - Friday, 7:30 AM - 5:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ophelia Hawthorne/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772

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